

## § 4901.34

### § 4901.34 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

## PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

Sec.

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### § 4902.1 Purpose and Scope.

(a) *Procedures.* Sections 4902.3 through 4902.7 establish procedures under which—

(1) An individual may—

(i) Determine whether PBGC maintains any system of records that contains a record pertaining to the individual;

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(ii) Obtain access to the individual's record upon request;

(iii) Make a request to amend the individual's record; and

(iv) Appeal a denial of a request to amend the individual's record; and

(2) PBGC will make an initial determination of a request to amend an individual's record.

(b) *Fees.* Section 4902.8 prescribes the fees for making copies of an individual's record.

(c) *Privacy Act provisions.* Section 4902.9 summarizes the Privacy Act (5 U.S.C. 552a) provisions for which PBGC claims an exemption for certain systems of records.

(d) *Exemptions.* Sections 4902.10 through 4902.11 set forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act, and the reasons for the exemptions.

[74 FR 27081, June 8, 2009]

### § 4902.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part:

*Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

*System of records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

*Working day* means any weekday excepting Federal holidays.

[61 FR 34128, July 1, 1996, as amended at 74 FR 27081, June 8, 2009]

### § 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a request to the Disclosure Officer, Pension Benefit Guaranty Corporation, for the

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purpose of learning whether a system of records maintained by the PBGC contains any record pertaining to the requestor or obtaining access to such a record. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day. Current information on how to make a request, including the Disclosure Officer's mailing address and location, can be obtained on PBGC's Web site, <http://www.pbgc.gov>.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of records to which the request pertains and the requester's full name, home address and date of birth, and shall prominently state the words, "Privacy Act Request." If this information is insufficient to enable the PBGC to identify the record in question, or to determine the identity of the requester (to ensure the privacy of the subject of the record), the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record or to determine the identity of the requester.

(c) Unless the request is only for notification of the existence of a record and such notification is required under the Freedom of Information Act (5 U.S.C. 552), the requester shall be required to provide verification of his or her identity to the PBGC as set forth in paragraph (c)(1) or (2) of this section, as appropriate.

(1) If the request is made by mail, the requester shall submit a notarized statement establishing his or her identity.

(2) If the request is made in person, the requester shall show identification satisfactory to the disclosure officer, such as a driver's license, employee identification, annuitant identification or Medicare card.

(d) The disclosure officer shall respond to the request in writing within 10 working days after receipt of the request or of such additional information as may be required under paragraph (b) of this section. If a request for access to a record is granted, the response

shall state when the record will be made available.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003; 74 FR 27081, June 8, 2009]

### § 4902.4 Disclosure of record to an individual.

(a) When the disclosure officer grants a request for access to records under § 4902.3, such records shall be made available when the requester is advised of the determination or as promptly thereafter as possible. At the requester's option, the record will be made available for the requester's inspection and copying at the PBGC, between the hours of 9 a.m. and 4 p.m. on any working day, or a copy of the record will be mailed to the requester. Current information on where the records may be inspected and copied can be obtained on PBGC's Web site, <http://www.pbgc.gov>.

(b) If the requester desires to be accompanied by another individual during the inspection and/or copying of the record, the requester shall, either when the record is made available or at any earlier time, submit to the disclosure officer a signed statement identifying such other individual and authorizing such other individual to be present during the inspection and/or copying of the record.

[61 FR 34128, July 1, 1996, as amended at 74 FR 27082, June 8, 2009]

### § 4902.5 Procedures for requesting amendment of a record.

(a) Any individual about whom the PBGC maintains a record contained in a system of records may request that the record be amended. Such a request shall be submitted in the same manner described in § 4902.3(a).

(b) Each request submitted under paragraph (a) of this section shall include the information described in § 4902.3(b) and a statement specifying the changes to be made in the record and the justification therefor. The disclosure officer may request further identifying data as described in § 4902.3(b).

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing

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to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to such request as promptly as possible.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003]

### **§ 4902.6 Action on request for amendment of a record.**

(a) Within 20 working days after receipt by the PBGC of a request for amendment of a record under § 4902.5, unless for good cause shown the Director of the PBGC extends such 20-day period, the disclosure officer shall notify the requester in writing whether and to what extent the request shall be granted. To the extent that the request is granted, the disclosure officer shall cause the requested amendment to be made promptly.

(b) When a request for amendment of a record is denied in whole or in part, the denial shall include a statement of the reasons therefor, the procedures for appealing such denial, and a notice that the requester has a right to assistance in preparing an appeal of the denial.

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61359, Oct. 28, 2003; 74 FR 27082, June 8, 2009]

### **§ 4902.7 Appeal of a denial of a request for amendment of a record.**

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit Guaranty Corporation, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Director or Director's designee, Pension Benefit Guaranty Corporation. The appeal shall state in detail the basis on which it is made and shall clearly state "Pri-

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vac Act Request" on the first page. In addition, the submission shall clearly state "Privacy Act Request" on the envelope (for mail, hand delivery, or commercial delivery), in the subject line (for e-mail), or on the cover sheet (for fax).

(b) Within 30 working days after the receipt of the appeal, unless for good cause shown the Director of the PBGC extends such 30-day period, the General Counsel or, where appropriate, the Director or Director's designee, shall issue a decision in writing granting or denying the appeal in whole or in part. To the extent that the appeal is granted, the General Counsel or, where appropriate, the Director or Director's designee, shall cause the requested amendment to be made promptly. To the extent that the appeal is denied, the decision shall include the reasons for the denial and a notice of the requester's right to submit a brief statement setting forth reasons for disputing the denial of appeal, to seek judicial review of the denial pursuant to 5 U.S.C. 552a(g)(1)(A), and to obtain further information concerning the provisions for judicial review under that section.

(c) An individual whose appeal has been denied in whole or in part may submit a brief summary statement setting forth reasons for disputing such denial. Such statement shall be submitted within 30 days of receipt of the denial of the appeal to the Disclosure Officer. Any such statement shall be made available by the PBGC to anyone to whom the record is subsequently furnished and may also be accompanied, at the discretion of the PBGC, by a brief statement summarizing the PBGC's reasons for refusing to amend the record. The PBGC shall also provide copies of the individual's statement of dispute to all prior recipients of the record with respect to whom an accounting of the disclosure of the record was maintained pursuant to 5 U.S.C. 552a(c)(1).

(d) To request further information concerning the provisions for judicial review, an individual shall submit such

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request in writing to the Deputy General Counsel, who shall respond to such request as promptly as possible.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61359, Oct. 28, 2003; 74 FR 27082, June 8, 2009; 74 FR 30212, June 25, 2009]

### § 4902.8 Fees.

When an individual requests a copy of his or her record under § 4902.4, charges for the copying shall be made according to the following fee schedule:

(a) *Standard copying fee.* There shall be a charge of \$0.15 per page of record copies furnished. Where the copying fee is less than \$1.50, it shall not be assessed.

(b) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the individual desiring reproduction may request a special rate quotation from the PBGC.

(c) *Manual copying by requester.* No charge will be made for manual copying by the requester of any document made available for inspection under § 4902.4. The PBGC shall provide facilities for such copying without charge between the hours of 9 a.m. and 4 p.m. on any working day.

### § 4902.9 Privacy Act provisions for which PBGC claims an exemption.

Subsections 552a(j) and (k) of title 5, U.S.C., authorize PBGC to exempt systems of records meeting certain criteria from various other subsections of section 552a. This section contains a summary of the Privacy Act provisions for which PBGC claims an exemption for the systems of records discussed in this part pursuant to, and to the extent permitted by, subsections 552a(j) and (k):

(a) Subsection (c)(3) of 5 U.S.C. 552a requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(b) Subsection (c)(4) of 5 U.S.C. 552a requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with subsection (d) of the Privacy Act.

(c) Subsections (d)(1) through (4) of 5 U.S.C. 552a require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(d) Subsection (e)(1) of 5 U.S.C. 552a requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(e) Subsection (e)(2) of 5 U.S.C. 552a requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(f) Subsection (e)(3) of 5 U.S.C. 552a requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, whether disclosure is mandatory or voluntary, the principal purpose(s) for which the information will be used, the routine uses that may be made of the information, and the effects of not providing the information.

(g) Subsection (e)(4)(G) and (H) of 5 U.S.C. 552a requires an agency to publish a FEDERAL REGISTER notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(h) Subsection (e)(5) of 5 U.S.C. 552a requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(i) Subsection (e)(8) of 5 U.S.C. 552a requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such

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process becomes a matter of public record.

(j) Subsection (f) of 5 U.S.C. 552a requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(k) Subsection (g) of 5 U.S.C. 552a provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of the Privacy Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

[74 FR 27082, June 8, 2009]

## § 4902.10 Specific exemption: Personnel Security Investigation Records.

(a) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), PBGC hereby exempts the system of records entitled “PBGC–12, Personnel Security Investigation Records—PBGC” from the provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), to the extent that the disclosure of such material would reveal the identity of a source who furnished information to PBGC under an express promise of confidentiality or, before September 27, 1975, under an implied promise of confidentiality.

(b) *Reasons for Exemption.* The reasons for asserting this exemption are to insure the gaining of information essential to determining suitability and fitness for PBGC employment or for work for PBGC as a contractor or as an employee of a contractor, access to information, and security clearances, to insure that full and candid disclosures are obtained in making such determinations, to prevent subjects of such determinations from thwarting the completion of such determinations, and to avoid revealing the identities of persons who furnish information to PBGC in confidence.

[74 FR 27082, June 8, 2009]

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## § 4902.11 Specific exemptions: Office of Inspector General Investigative File System.

(a) *Criminal Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), PBGC hereby exempts the system of records entitled “PBGC–17, Office of Inspector General Investigative File System—PBGC” from the provisions of 5 U.S.C. 552a (c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws.

(2) *Reasons for exemption.* The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to subsections (c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence.

(ii) Application of subsection (e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the Office of Inspector General to keep information that may not be relevant to a specific Office of Inspector General investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General and/or other agencies.

(iii) Application of subsection (e)(2) would be counterproductive to performance of a criminal investigation because it would alert the individual to the existence of an investigation.

(iv) Application of subsection (e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, PBGC has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(vi) Although the Office of Inspector General endeavors to maintain accurate records, application of subsection (e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of subsection (g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), PBGC hereby exempts the system of records entitled “PBGC–17, Office of Inspector General Investigative File System—PBGC” from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of the Office of Inspector General operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, e.g., 5 U.S.C. 552(b)(5)), and which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), PBGC hereby exempts the system of records entitled “PBGC–17, Office of In-

spector General Investigative File System—PBGC” from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reason for exemption.* The reason for asserting this exemption is to protect from disclosure the identity of a confidential source when an express promise of confidentiality has been given to obtain information from sources who would otherwise be unwilling to provide necessary information.

[74 FR 27082, June 8, 2009]

#### **§ 4902.12 Filing rules; computation of time.**

(a) *Filing rules—(1) Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

[68 FR 61359, Oct. 28, 2003. Redesignated at 74 FR 27082, June 8, 2009]

## **PART 4903—DEBT COLLECTION**

### **Subpart A—General Provisions**

Sec.

4903.1 What definitions apply to this part?

4903.2 What do these regulations cover?

4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?